

## HOUSE BILL NO. 401

INTRODUCED BY M. LEE, COCCHIARELLA, COLE, FACEY

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE RAILROAD VANDALISM PREVENTION ACT;  
ESTABLISHING THE OFFENSES OF STOWING AWAY ON RAILROAD PROPERTY, ~~NEGLIGENT~~  
~~VANDALISM TO RAILROAD PROPERTY~~, INTENTIONAL VANDALISM TO RAILROAD PROPERTY, THEFT  
OF RAILROAD FREIGHT, AND RECEIVING STOLEN RAILROAD FREIGHT; ~~AND~~ ESTABLISHING PENALTIES  
FOR THE OFFENSES; AND PROVIDING A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 7 6] may be cited as the "Railroad Vandalism Prevention Act".

NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through 7 6] is to:

- (1) better inform the public of current widespread vandalism that takes place on railroad property and the cost of that vandalism that must ultimately be borne by shippers;
- (2) prevent accidents and injuries to persons who ~~unlawfully~~ enter railroad property;
- (3) prevent acts of vandalism to railroad property that affect the health, safety, and welfare of the traveling public, the neighboring community, and railroad employees;
- (4) protect railroad property and freight in transit; and
- (5) otherwise enhance the safety of transportation by railroad.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 7 6], the following definitions apply:

- (1) "Bodily injury" means:
  - (a) a cut, abrasion, bruise, burn, or disfigurement;
  - (b) physical pain;
  - (c) illness;
  - (d) impairment of the function of or loss of a bodily member, organ, or mental faculty; or

(e) any other injury to the body, no matter how temporary.

(2) "Enter railroad property" includes but is not limited to performing ~~any of the following~~  
VANDALISM OR OTHER UNLAWFUL ACTIVITY on railroad property:-

~~— (a) vandalism or other unlawful activity; or~~

~~— (b) engaging in biking, hiking, camping, cross-country skiing, or horseback riding.~~

(3) (a) "Railroad" means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways.

(b) Railroad does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(4) "Railroad carrier" means an entity that provides rail transportation.

(5) (a) "Railroad property" means all tangible real and personal property owned, leased, or operated by a railroad carrier including a right-of-way, track, bridge, yard, shop, station, tunnel, viaduct, trestle, depot, warehouse, terminal, railroad signal system, train control system, centralized dispatching system, or any other structure, appurtenance, or equipment owned, leased, or used in the operation of any railroad carrier, including a train, locomotive, engine, railroad car, work equipment, rolling stock, or safety device.

(b) Railroad property does not include a railroad carrier's administrative buildings or offices, office equipment, or intangible property such as computer software or other information.

(6) "Right-of-way" means the track or roadbed owned, leased, or operated by a railroad carrier that is located on either side of its tracks and that is readily recognizable to a reasonable person as being railroad property or is reasonably identified as railroad property by fencing or appropriate signs.

(7) "Serious bodily injury" means bodily injury that involves:

(a) a substantial risk of death;

(b) extreme physical pain;

(c) protracted and obvious disfigurement; or

(d) protracted impairment of the function of or loss of a bodily member, organ, or mental faculty.

(8) "Vandalism to railroad property" means committing an act that may cause damage to railroad property or bodily injury to another person. This includes but is not limited to:

(a) taking, removing, defacing, altering, marking with graffiti, or otherwise marking a railroad sign, placard, or marker;

(b) throwing a rock, baseball, or other dangerous object at a locomotive, railroad car, or train;

(c) dropping a brick or other dangerous object from a bridge or other overpass onto a railroad right-of-way;

(d) shooting a firearm or other dangerous weapon at a locomotive, railroad car, or train;

(e) removing appurtenances from, damaging, or otherwise impairing the operation of any railroad signal system, including a train control system, centralized dispatching system, or highway-railroad grade crossing warning signal on a railroad owned, leased, or operated by a railroad carrier, without consent of the railroad carrier;

(f) interfering or tampering with or obstructing in any way any switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment, structure, or appliance pertaining to or connected with any railroad carrier, without consent of the railroad carrier; or

(g) taking, stealing, removing, changing, adding to, altering, or in any manner interfering with any journal bearing, brass, waste, packing, triple valve, pressure cock, brake, air hose, or any other part of the operating mechanism of any locomotive, engine, tender, coach, car, caboose, or motor car used or capable of being used by any railroad carrier, without the consent of the railroad carrier.

(9) "Yard" means a system of parallel tracks, crossovers, and switches where railroad cars are switched and made up into trains and where railroad cars, locomotives, and other rolling stock are kept when not in use or when awaiting repairs.

**NEW SECTION. Section 4. Stowing away on railroad property.** (1) A person commits the offense of stowing away on railroad property if the person knowingly and without lawful authority or consent is on, occupies, or rides on the outside of a train or on the inside of a passenger car, locomotive, or freight car, including a boxcar, flatbed, or container car.

(2) A person convicted of the offense of stowing away on railroad property shall be fined an amount not to exceed \$1,000 or be incarcerated in the county jail for a term not to exceed 6 months, or both.

~~**NEW SECTION. Section 5. Negligent vandalism to railroad property.** (1) A person commits the offense of negligent vandalism to railroad property if the person vandalizes railroad property negligently, as defined in 45-2-101.~~

~~1 (2) A person convicted of negligent vandalism to railroad property must be ordered to make  
2 restitution to the railroad carrier in the amount of the cost to repair any railroad property damaged, the cost  
3 of any train or shipment delay, and the cost of any accident or damage resulting from the vandalism.~~

~~4 (3) (a) A person convicted of the offense of negligent vandalism to railroad property in which the  
5 damage to railroad property does not exceed \$500 and in which there is no bodily injury to another person  
6 as a result of the offender's actions shall be ordered to perform community service for not more than 120  
7 hours. If community service is not available in the jurisdiction where the offense was committed, the  
8 person shall be fined an amount not to exceed \$500 or be incarcerated in the county jail for a term not  
9 to exceed 6 months, or both.~~

~~10 (b) A person convicted of the offense of negligent vandalism to railroad property in which the  
11 damage to railroad property exceeds \$500 or in which there is bodily injury to another person as a result  
12 of the offender's actions shall be fined an amount not to exceed \$10,000 or be incarcerated for a term  
13 not to exceed 10 years, or both.~~

~~14 (c) A person convicted of the offense of negligent vandalism to railroad property that results in  
15 serious bodily injury to another person or death of another person as a result of the offender's actions shall  
16 be fined an amount not to exceed \$20,000 or be incarcerated for a term not to exceed 20 years, or both.~~

**NEW SECTION. Section 5. Intentional vandalism to railroad property.** (1) A person commits the  
offense of intentional vandalism to railroad property if the person knowingly or purposely vandalizes  
railroad property.

(2) A person convicted of intentional vandalism to railroad property must be ordered to make  
restitution to the railroad carrier in the amount of the cost to repair any railroad property damaged, the cost  
of any train or shipment delay, and the cost of any accident or damage resulting from the vandalism.

(3) (a) A person convicted of the offense of intentional vandalism to railroad property in which the  
damage to railroad property does not exceed \$500 and in which there is no bodily injury to another person  
as a result of the offender's actions shall be fined an amount not to exceed \$10,000 or be incarcerated  
for a term not to exceed 10 years, or both.

(b) A person convicted of the offense of intentional vandalism to railroad property in which the  
damage to railroad property exceeds \$500 or in which there is bodily injury to another person as a result  
of the offender's actions shall be fined an amount not to exceed \$20,000 or be incarcerated for a term

1 not to exceed 20 years, or both.

2 (c) A person convicted of the offense of intentional vandalism to railroad property that results in  
3 serious bodily injury to another person as a result of the offender's actions shall be fined an amount not  
4 to exceed \$25,000 or be incarcerated in a state prison for any term of years or for life, or both, except  
5 as provided in 46-18-219 and 46-18-222.

6 (d) A person convicted of the offense of intentional vandalism to railroad property that results in  
7 the death of another person as a result of the offender's actions shall be fined an amount not to exceed  
8 \$100,000 or be incarcerated in a state prison for any term of years or for life, or both, except as provided  
9 in 46-18-219 and 46-18-222.

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11 NEW SECTION. Section 6. Theft of railroad freight -- receiving stolen railroad freight. (1) A  
12 person commits the offense of theft of railroad freight if the person takes railroad freight by theft, as  
13 established in 45-6-301(1).

14 (2) A person commits the offense of receiving stolen railroad freight if the person obtains stolen  
15 railroad freight by theft, as established in 45-6-301(3).

16 (3) A person convicted of the offense of theft of railroad freight or the offense of receiving stolen  
17 railroad freight shall be fined an amount not to exceed \$5,000 or be incarcerated for a term not to exceed  
18 5 years, or both.

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20 NEW SECTION. Section 7. Codification instruction. [Sections 1 through 7 6] are intended to be  
21 codified as an integral part of Title 69, chapter 14, and the provisions of Title 69, chapter 14, apply to  
22 [sections 1 through 7 6].

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24 NEW SECTION. SECTION 8. TERMINATION. [THIS ACT] TERMINATES APRIL 30, 2003.

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